

Office of the Hon Kenneth Leung

**Background Brief on the
Professional Accountants (Amendment) Bill 2018**

INTRODUCTION

1. This paper sets out the background of the Hon Kenneth Leung's proposal to amend the Professional Accountants Ordinance (Cap. 50) ("PAO"), which will be introduced as a Member's Bill into the Legislative Council, namely the "Professional Accountants (Amendment) Bill 2018" (the "proposed Bill").

PROPOSAL

2. The proposed Bill amends the PAO –
 - (1) to prohibit a person who is not a certified public accountant from using additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant" in his business, trade, calling or profession; and ;
 - (2) to prohibit a body corporate or a firm, not being a practice unit registered under the Ordinance, from using in their names additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant", or any written words, initials, or abbreviations of words, if they intend to cause or may reasonably cause any person to believe that the body corporate or the firm is a practice unit; and
 - (3) to increase the penalty level of offence to reinforce the deterrent effect against offences under Section 42(1) of the PAO.

JUSTIFICATION

3. The Hon Kenneth Leung introduced the Professional Accountants (Amendment) Bill 2013 to prohibit any company which is not a corporate practice from using the terms "certified public accountant", "CPA" or "會計師" in its name if the intention is to cause, or which may reasonably cause any person to believe that it is a practice unit under the PAO. The Bill passed on 30 October 2013 and came into force on 14 January 2014.

4. Under section 42(1)(ha) of the PAO, it is an offence for a company not being a corporate practice, to use the descriptions “certified public accountant (practising)” or “public accountant”, the initials “CPA (practising)”, “PA” or the characters “執業會計師”, “註冊核數師”, “核數師” or “審計師”, in its name in connection with its business. Furthermore, it is an offence for a company not being a corporate practice, to use the descriptions “certified public accountant”, the initials “CPA” or the characters “會計師” with the intention of causing, or in a way which may reasonably cause a person to believe that it is a practice unit.
5. The current section 42(1)(ha) does not prohibit a company which is not a corporate practice, from using any written words, abbreviation of words, description, initials, or characters which may reasonably cause a person to believe that it is a practice unit, as long as its name does not use in conjunction with the descriptions, initials or characters stated in section 42(1)(ha) of the PAO.
6. The amendments add to the relevant subsections of section 42(1) of the PAO additional descriptions such as “professional accounting”, “registered accounting”, “certified accounting”, “專業會計” and “註冊會計” etc. which may similarly mislead the public into believing that the service providers are, or are related to, certified public accountants or practice units registered with and subject to supervision by the Hong Kong Institute of Certified Public Accountants (the “**Institute**”).
7. Company searches have revealed that there are companies registered with the Companies Registry which are currently using terms such as “Professional Accounting and Secretary”, “Professional Accounting and Secretarial Services”, “Professional Accounting and Taxation”, and “Accounting and Professional Services” which may cause confusion and lead the public to believe that such companies are practice unit qualified to provide professional auditing service under the PAO.
8. In a reply to a written question raised by the Hon Kenneth Leung on 16 December 2015, the Secretary for Financial Services and the Treasury stated the Police were concerned about crimes arising from money lending activities, in particular, those with the involvement of financial intermediaries. Between August to October 2015, the Police received 235 reported case from the public concerning alleged illegal activities by financial intermediaries. Out of these cases, 61 cases had

classified as criminal cases.

9. The Secretary for Financial Services and the Treasury has observed that there were cases under which financial intermediaries operating under the name of an “accounting firm”, a “law firm” or a “consultancy firm” claimed to be able to provide professional services including debt restructuring, stress test analyses, accounting advice, improvement in credit records for individuals.
10. It is in the public interest to enable the general public to identify easily whether a person or a company is a practice unit which is qualified to provide professional auditing service under the PAO. It is also important to prohibit unqualified company and individual to provide auditing services, as this practice may damage the reputation and integrity of the accountancy profession in Hong Kong.
11. According to information provided by the Institute, between 2010 and 2015, the police successfully prosecuted 16 cases of unlicensed practices, the majority of which involved an unlicensed practice holding itself out as a professional accountant to provide audit services in its website or other promotional materials, with the penalty ranging from \$2,000 to \$15,000.
12. The current pecuniary penalty provided in the PAO for the offences under Section 42(1) is a fine at level 4¹ and up to 12 months of imprisonment for individuals, and a fine at level 4 for firms. The current level of penalty has not been a successful deterrent to put offenders in check.
13. A version of the proposed Bill (previously known as the Professional Accountants (Amendment) Bill 2016) was presented to and approved by the members of the Panel on Financial Affairs on 15 November 2016. The draft bill was further enhanced after input from the Institute. The Financial Services and Treasury Bureau requested that the updated Bill be brought to the Panel on Financial Affairs once again to explain the enhancements.
14. The Competition Commission’s (the “**Commission**”) view has been sought on the proposed bill. In a reply from the Commission on 28 August 2017, the Commission stated that it does not consider the Bill to have raised any competition concerns.

¹ Cap 221 - Criminal Procedure Ordinance Section 113C specifies the penalty for a fine at level 4 to be \$10,001 to \$25,000. A fine at level 5 is specified to be \$25,001 to \$50,000.

15. Members' approval to support the proposed bill was sought and obtained at the Institute's annual general meeting on 14 December 2017.

Office of the Hon Kenneth Leung
January 2018

[Draft]

Professional Accountants (Amendment) Bill 2018

A Bill To

Amend the Professional Accountants Ordinance to tighten up restrictions on the use of misleading descriptions by individuals and companies that are not practice units.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Professional Accountants (Amendment) Ordinance 2018.

Part 2

Amendments Relating to the Usage of the Term “Certified Public Accountant”

2. Professional Accountants Ordinance amended

The Professional Accountants Ordinance (Cap. 50) is amended as set out in this Part.

3. Section 42 amended (Offences and penalties)

(1) Section 42(1)(h)(i) is amended –

(a) After “certified public accountant”, by repealing “or” and substituting a comma;

(b) After “certified accountant,”, by adding –

“registered accountant”, “professional accounting”, “registered accounting”, “certified public accounting”, or “certified accounting”;

(c) After “會計師”, by repealing “or” and substituting a comma;

(d) After ""註冊會計師",", by adding –

""專業會計", "註冊會計", "認可會計", or "執業會計",".

(2) Section 42(1)(ha)(iv) is amended –

(a) After ""certified public accountant",", by adding –

""professional accountant", "certified accountant", "registered accountant", "professional accounting", "registered accounting", "certified public accounting", or "certified accounting",";

(b) After ""會計師"", by adding –

", "專業會計師", "註冊會計師", "專業會計", "註冊會計", "認可會計", or "執業會計", or any written words, initials or abbreviations of words";

(c) After "in subparagraph (iii))", by adding a coma.

(3) By adding, after section 42(1)(i) –

"(iaa) being a firm which is not a practice unit registered under section 28A, other than a sole proprietorship of a certified public accountant, includes in, or uses in conjunction with, its name the description "certified public accountant", "professional accountant", "certified accountant", "registered accountant", "professional accounting", "registered accounting", "certified public accounting" or "certified accounting", the initials "CPA" or the characters "會計師", "專業會計師", "註冊會計師", "專業會計", "註冊會計", "認可會計", or "執業會計", or any written words, initials or abbreviations of words, with the intention of causing, or in a way which may reasonably cause, a person to believe that it is a practice unit;"

(4) Section 42(1)(i) is amended, after “in the case of an individual, to a fine at”, by repealing "level 4" and substituting "level 5".

(5) Section 42(1)(ii) is amended -

(a) after "in the case of a firm", by adding "(including a firm";

(b) after "certified public accountants (practising)", by adding ")";

(c) after “or never registered in the register, to a fine at”, by repealing "level 4" and substituting "level 5".

Explanatory Memorandum

1. The purpose of this Bill is to prohibit the use of descriptions by individuals, firms or companies which may mislead the public into believing that they are certified public accountants or practice units registered with the Hong Kong Institute of Certified Public Accountants, when in fact they are not. It seeks to amend section 42 of the Professional Accountants Ordinance (Cap. 50) ("**the Ordinance**") to prohibit:-
 - (1) a person who is not a certified public accountant from using additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant" in his business, trade, calling or profession; and
 - (2) a body corporate or a firm, not being a practice unit registered under the Ordinance, from using in their names additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant", or any written words, initials, or abbreviations of words, if they intend to cause or may reasonably cause any person to believe that the body corporate or the firm is a practice unit.
2. Clause 3(1) amends section 42(1)(h)(i) to prohibit a person who is not a certified public accountant from using 9 additional specified descriptions, namely "registered accountant", "professional accounting", "registered accounting", "certified public accounting", "certified accounting", "專業會計", "註冊會計", "認可會計" and "執業會計".
3. Clause 3(2) amends section 42(1)(ha)(iv) to prohibit a body corporate which is not a corporate practice registered under the Ordinance from using in its name 13 additional specified descriptions, namely "professional accountant", "certified accountant", "registered accountant", "professional accounting", "registered accounting", "certified public accounting", "certified accounting", "專業會計師", "註冊會計師", "專業會計", "註冊會計", "認可會計" and "執業會計", or any written words, initials, or abbreviations of words, if the body corporate intends to cause or may reasonably cause any person to believe that it is a practice unit. The 13 specified descriptions include the 9 new specified descriptions introduced into section 42(1)(h)(i) under clause 3(1) above, and the descriptions "professional accountant", "certified accountant", "專業會計師" and "註冊會計師" which currently appear in section 42(1)(h)(i).
4. Clause 3(3) adds a new subsection (iaa) to prohibit a firm, which is not a practice unit registered under section 28A of the Ordinance, other than a sole proprietorship of a certified public accountant, from using in its name 16 specified descriptions, namely "certified public accountant", "professional accountant", "certified accountant", "registered accountant", "professional accounting", "registered accounting", "certified public accounting", "certified accounting", "CPA", "會計師", "專業會計師", "註冊會計師".

冊會計師", "專業會計", "註冊會計", "認可會計" and "執業會計", or any written words, initials, or abbreviations of words, if the firm intends to cause or may reasonably cause any person to believe that it is a practice unit. The 16 specified descriptions are identical to the ones provided for body corporate under section 42(1)(ha)(iv) as amended by clause 3(2) above (i.e. "certified public accountant", "CPA" and "會計師" currently appearing in section 42(1)(ha)(iv) plus the 13 specified descriptions in clause 3(2) above).

5. Clauses 3(4) and 3(5)(c) increase the level of fine payable for breaches of section 42(1), save for breaches of section 42(1)(l), from level 4 to level 5.
6. Clauses 3(5)(a) and 3(5)(b) amend section 42(1)(ii) to rectify an existing lacunae that the sub-section only refers to a "firm of certified public accountants (practising)" but not a firm which is not a "firm of certified public accountants (practising)".